

10/11/2011

Comment by the Michigan State Police Forensic Science Division

RE: ADM File No. 2010-14, Disclosure of Forensic Test Results

BY: John M. Collins, Division Director

The Michigan State Police Forensic Science Division (FSD) has no objection to the overall intent and spirit of the above referenced change to the Michigan Court Rules. We defer to Michigan's police and prosecutors for comment on how this rule may impact our customers. We do, however, offer the following points for consideration:

(A) Mandatory Disclosure

Comment on Scope: For the purposes of this rule, it is not appropriate to limit its scope to the laboratories of the Michigan State Police. Forensic testing results from any laboratory must apply. FSD does not operate the only forensic science laboratories in the state of Michigan. The laboratory from which forensic testing results originate is not relevant to defendants' rights to confront. If the Michigan Supreme Court believes that it is inappropriate to apply this rule to a non-state laboratory, then it would be equally inappropriate to apply this rule to the State laboratories without funding if conformance to the rule's language might require it.

Comment on Time Constraints: We are concerned about the 28-day requirement in Section (A). We recommend discussion with appropriate laboratory representatives to determine how this requirement, combined with already strict rules on speedy trials, will adversely impact the operation of laboratories. If the adoption of this rule creates operational hardships or difficulties for forensic science laboratories, the response may be to limit the scope of services so that demand does not overtake capacity. At this time, we are unsure of how the 28-day requirement will impact the operations of laboratories.

We are keenly aware of our case backlog and high turnaround times. We have made tremendous progress in these areas through improved business practices and better collaboration with our customers. Our case backlogs have been cut in half since January 2010 when they reached their peak, and we have more progress to make in the near future. Time constraints and other time pressures, however, create quality assurance risks in a laboratory setting. For the most part, these risks are mitigated during the course of daily business; however, laboratories will not jeopardize quality, under any circumstance, in the interest of time. What is actually considered a reasonable period of time in which to test evidence is often a scientific decision, not only a judicial one. The autonomy and authority of forensic science laboratories to make such decisions when necessary to manage resources must be respected and protected.

(B) Notice and Demand

Comment on Certificate: It should be noted that Forensic Science Laboratory Accreditation under the international ISO/IEC 17025 standard requires that which the proposed rule requires, making the rule redundant for accredited laboratories such as those operated by the Michigan State Police. Demonstration of the laboratory's accreditation certificate may suffice to meet the needs of the courts.

If this is not deemed to be the case, it is recommended that as an alternative to separate certificates, the rule allow certifying language to be included within the forensic testing reports themselves, or within attached or referenced addenda to the reports. Separate certificates may be reasonable when the laboratory elects to not include the necessary certifying language in the actual report or its addenda. Allowing certifying language within the testing report itself, or within an addendum, is a more efficient solution for laboratories.

Thank you for the opportunity to share these comments. My contact information is below.

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